

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application.

Claim 1 has been amended by incorporating the subject matter of claims 2, 4, 7, 12, 17 and 27, which have been canceled, without prejudice. Claim 1 has been further amended to specify that the raw ingredients making up the coarse emulsion include an oil phase. Support for these amendments may be found in the canceled claims and throughout the specification.

Care has been taken not to introduce any new matter.

I. **Rejection Under 35 USC §112**

Support for claim 29 may be found, for example, in Example 1 as originally filed. Accordingly, it is requested that the rejection made under 35 USC §112, paragraph 1, be withdrawn and rendered moot.

II. Rejection Under 35 USC §103

Claims 1-28 were rejected under 35 USC §103 as being unpatentable over Trainor, U.S. Patent No. 4,423,084 (hereinafter, Trainor '084) in view of Ross, U.S. Patent No. 5,632,596 (hereinafter, Ross '596) and for the reasons set forth in the Board of Appeals decision of September 30, 2004. According to the Office Action, in summary, Trainor '084 discloses a process for making a salad dressing having starch, acidulant, egg, oil, water and sweetener. Admittedly, the '084 reference is silent with respect to rotor and stator measurements, but the specific apparatus features described in Ross '596 are relied upon to cure the vast deficiencies of the primary reference. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention is directed to a process for making an emulsified dressing composition, the dressing composition being a mayonnaise or salad dressing. The process is carried out in an in-line mixer/emulsifier whereby a coarse *oil/water* emulsion is sent through the in-line mixer/emulsifier in a single pass to produce the desired dressing composition. Thus, independent claim 1, is directed to a process for making a mayonnaise and/or salad dressing composition in the same production line such that a coarse emulsion is sent through an apparatus in a single pass. Only one production line is required in order to make two distinct dressing compositions.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, various and unobvious process modifications which include axial opening dimensions, the diameter of the stator and rotor, the rotational speeds of the rotor, the tip speed of the rotor, the throughput of the process, the characteristics of the rings of the teeth of the stator and rotor, and the presence of radial channels on the stator and rotor. The process of claim 1 is still further defined in that the raw ingredients can comprise an oil phase, an egg phase, an aqueous phase, a starch paste phase, a sweetener phase, an acidulant phase, optional solids, or combinations thereof. Claims 23 and 24 identify certain raw ingredients and claims 25-26 define the type of emulsifier and amounts employed. Dependent claim 28 further defines the process of claim 1 such that the mayonnaise and salad dressing produced *in the same production line* are firm to creamy and made with less oil and less emulsifying components when compared to compositions made via conventional processes. Specifically, the process set forth in the claimed invention results in a mayonnaise or salad dressing composition that is firm to creamy in the absence of high levels of oil and emulsifying agents. Thus, good textures are achieved while reducing the amount of oil and/or emulsifying components when compared to conventional processes. Such good textures are also achieved without utilizing starch.

Claim 22 describes a dressing composition made by the process of claim 1.

In contrast, Trainor '084 merely describes a process for making emulsified salad dressings with starch but in the absence of freeze-resistance starch. The '084 reference does not teach, suggest, or disclose, for example, the steps of forming a premix of raw ingredients which include an oil phase and an emulsifier phase to make a coarse emulsion to be fed in a single pass to an in-line mixer/emulsifier having a specific stator and rotor arrangement as claimed. Moreover, Trainor '084 is silent with

respect to oil amount, additives and emulsifier amounts as well as texture characteristics as set forth in the presently claimed invention.

The vast deficiencies of Trainor '084 are not cured by Ross '596, since the '596 reference only discloses a rotor and stator assembly in an industrial mixer that can be used to blend various materials like adhesives, coatings, cosmetics, foods, pharmaceuticals and plastics. The combination of references relied on by the Examiner does not, even remotely, suggest blending mayonnaise and/or salad dressing compositions in one pass and in the same production line. Furthermore, the combination of references relied on by the Examiner does not, even remotely, suggest that a firm to creamy mayonnaise composition and/or salad dressing composition can be made with a creamy to firm texture while at the same time having less oil and/or emulsifier than conventional products (even in the absence of starch).

Claim 29 was rejected under 35 USC §103 as being unpatentable over Akashe, U.S. Patent No. 6,235,336 (hereinafter, Akashe '336) in view of Ross, U.S. Patent No. 5,632,596 (hereinafter, Ross '596). According to the Office Action, Akashe '336 disclose using salted egg yolks to make an emulsion in a device with a rotor/stator shear device; The ingredients of the product are shown in the first Table in column 6. The Office Action admits that the claims differ from Akashe '336 in the specific apparatus features of the shear device; and relies on Ross to cure deficiencies.

Applicants respectfully traverse. Akashe '336 merely relate to one possible ingredient in a dressing composition, i.e., egg yolk. The present invention does not even call for the *modified* egg yolk of Akashe '336 and Applicants question its relevance to the present invention. Ross '596 fails to cure the deficiencies of Akashe '336 in order to arrive at the subject matter of the present invention. Akashe '336 is not aimed at

forming a starch-free dressing. Furthermore, there is no suggestion in Akashe '336 for combination with Ross '596. Reconsideration of this rejection is respectfully requested.

In view of the above, it is clear that the Examiner has not established a *prima facie* case of obviousness as required under 35 USC §103. In view of this, and since all claim limitations set forth in the presently claimed invention as now presented are not even remotely found in the combination of references relied on by the Examiner, it is respectfully requested that the rejection made under 35 USC §103 be withdrawn and rendered moot.

Applicants respectfully submit that all claims of record are in condition for allowance. Reconsideration and favorable action are earnestly solicited.

Applicants further submit that they welcome any suggestions by the Examiner so that the present application can be passed to issue and so that Applicants may further business objectives.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,



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